

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MATTHIAS EICHSTAEDT
AND
NEELAKANTAN SUNDARESAN

Appeal No. 2001-2550
Application No. 09/092,791¹

ON BRIEF

Before GROSS, DIXON, and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-13 and 15-39, which are all of the claims pending in this application.

We reverse.

¹ Application for patent filed June 5, 1998.

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BACKGROUND

Appellants' invention is directed to alleviating problems of long latency or delay periods on the Internet through the presentation of filler contents that keep the user occupied. The delay period triggers a filter which presents the filler content while the session or the accessing of data continues in the background and without interrupting the session or the accessing of data (specification, page 10). The filler contents are presented to the user when a web browser determines whether a predetermined delay period has been exceeded and the Web Filler is enabled (specification, page 13).

Representative independent claim 1 is reproduced as follows:

1. A method of alleviating problems associated with delays in accessing data on a network, comprising:

- (a) accessing data on a network from a client computer;
- (b) identifying when a sufficient delay occurs during the accessing step; and
- (c) presenting filler contents on the client computer during the identified sufficient delay, wherein the filler contents are customized to a user's taste.

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Judson	5,572,643	Nov. 5, 1996
Ching et al. (Ching)	5,864,611	Jan. 26, 1999 (filed Sep. 2, 1997)

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"Proactive Universal Resource Locators Lookup in Internet Web Browsers," IBM Technical Disclosure Bulletin (TDB), vol. 40, no. 9, September 1997, pp 113-114.

Claims 1-13 and 15-39 stand rejected under 35 U.S.C.
§ 103(a) as being unpatentable over Judson in view of TDB and Ching.

We make reference to the answer (Paper No. 11, mailed April 10, 2001) for the Examiner's reasoning, and to the brief (Paper No. 10, filed January 30, 2001) for Appellants' arguments thereagainst.

OPINION

The Examiner relies on Judson for disclosing presentation of customized filler contents on a client computer while a web page is being accessed (answer, page 4). Indicating that Judson does not specifically teach identifying a delay, the Examiner further relies on TDB and concludes that the combination would have suggested displaying filler contents during high latency times (id.). The Examiner also asserts that adding the teachings from Ching, that relate to detection of network delays to a specific threshold, would have been obvious to one of ordinary skill in the art (answer, page 5).

Appellants argue that while Judson describes that informational messages are always displayed and TDB provides for

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checking the displayed web sites while the user reads the page, their combination with Ching's estimating traffic rates does not result in presenting filler contents on the client computer during the identified sufficient delay (brief, page 4).

Appellants assert that the prior art actions are performed without identifying a sufficient delay wherein Judson always assumes that there will be sufficient delay for displaying the messages and TDB uses the time during which the user is reading the accessed data (id.). Additionally, Appellants argue that Ching merely discloses estimating traffic rates of large traffic sources for network management, and not for the use of individual users (id.).

In response to Appellants' arguments, the Examiner asserts that Judson provides for displaying the filler data if the downtime is sufficiently large between the start and the end of the download (answer, page 8). The Examiner then reasons that displaying the filler data when the downtime is small will defeat the purpose of using filler data by delaying reception and concludes that "it would have been beneficial to determine the length of downtime to selectively display the filler data" (id.). The Examiner, however, recognizes that determining the delay associated with each URL connection does not include a

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determination of the amount of delay and further points to Ching for disclosing "methods to determine a sufficient amount of delay" (id.).

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under § 103, the examiner must produce a factual basis supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The Examiner must not only identify the elements in the prior art, but also show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references." In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

Turning to Judson, we find ourselves in general agreement with the interpretations outlined by both the Examiner and Appellants that the link process and the display of filler

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information are performed in parallel without determining the delay time (col. 6, lines 1-12). TDB, on the other hand, merely provides for appropriate feedback to the user by marking the text links to identify the addresses that would not be available (see the paragraph linking pages 1 and 2). Thus, as pointed out by Appellants (brief, page 4), TDB is not concerned with identifying a sufficient delay and merely checks the availability of the address after the user has accessed the data.

We also agree with Appellants that Ching, similar to the other two references, has nothing to do with identifying a sufficient delay while the user is accessing the data. In that regard, Ching merely provides for estimating traffic rates on a network without extensive real-time database searching (col. 2, lines 9-15). The traffic rates are estimated by employing counters that keep track of the times the same class of a most recently selected address is accessed wherein the counters are reset once the counts reach a predetermined threshold number (col. 2, lines 26-43). Thus, it is the number of access times that Ching identifies and not a sufficient delay time while a specific class of address is being accessed.

Therefore, assuming, arguendo, that it would have been obvious to utilize the marking of unavailable URL addresses of

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TDB and the network traffic rates estimation of Ching in Judson's parallel presentation of the filler data, as held by the Examiner, the combination of references would still not disclose identifying a sufficient delay, as recited in claims 1, 15 and 27. In fact, the Examiner's proposed combination of presenting the filler data of Judson with TDB and Ching would have merely resulted in always presenting the filler content while the URL addresses are identified for availability and traffic rates are estimated by counting the number of access times to any class of address, whereas the claims require identifying a sufficient delay and presenting the filler contents during the identified sufficient delay. Accordingly, since the Examiner has failed to establish a prima facie case of obviousness, the 35 U.S.C. § 103 rejection of independent claims 1, 15 and 27, as well as claims 2-13, 16-26 and 28-39 dependent thereupon, cannot be sustained.

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CONCLUSION

In view of the foregoing, the decision of the Examiner to reject claims 1-13 and 15-39 under 35 U.S.C. § 103 is reversed.

REVERSED

Anita Pellman Gross

ANITA PELLMAN GROSS
Administrative Patent Judge

Joseph L. Dixon

JOSEPH L. DIXON
Administrative Patent Judge

Mahshid D. Saadat

MAHSHID D. SAADAT
Administrative Patent Judge

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